IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3144 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVALLI SADBHAVANA TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3144 of 2004

MR AJ SHASTRI for Petitioner No. 1

MS ARCHANA RAVAL, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 01/10/2004

ORAL JUDGEMENT

Rule. Ms.Archana Raval, Ld. AGP waives service of rule on behalf of the respondent State.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the State Government, Education Department dated 16.1.2004 in refusing to grant No Objection Certificate in favour of the petitioner trust for starting the educational institution for B.Ed. course.

3. Shri Shastri, Learned Advocate for the petitioner has submitted that while rejecting the application of the petitioner for No Objection Certificate, the State Government has not assigned any reasons and the said order is a non-speaking order. He has also further submitted that before refusing to grant No Objection Certificate, no opportunity is given to the petitioner trust and the said order is in violation of the principles of natural justice. Shri Shastri has relied upon the judgement of the Honourable Supreme Court of India in the case of 2002 (10) SCC 87 as well as the order passed by this Court in SCA No. 10393 of 2003 in support of his submission that the respondent ought to have assigned the reasons.

4. Ms.Archana Raval, Learned AGP has tried to support the order passed by the State Government. However, she has fairly conceded that so far as the reasons are concerned, no reasons are assigned and the impugned order is a non-speaking order.

5. Heard the Learned Advocates appearing for the parties.

6. On perusal of the impugned order dated 16.1.2004, it is very clear that no reasons have been assigned by the respondent while refusing to grant No Objection Certificate. Thus, the impugned order is a non-speaking order. The Honourable Supreme Court of India has while emphasizing to assign reasons has observed in the aforesaid judgement reported in 2002 (10) SCC 87 and held that when the impugned order is subject to challenge before the higher authority/higher forum then the authority must give reasons so that the higher authority/higher forum can know what was passing in the mind of the authority while refusing to grant No Objection Certificate. Considering the aforesaid judgement of the Honourable Supreme Court of India as well as this Court, the impugned order dated 16.1.2004 is required to be quashed and set aside as the same is a non-speaking order. The matter is remanded to the Secretary, Education Department, State of Gujarat for deciding the question of grant of No Objection

Certificate to the petitioner afresh. It is open for the petitioner to request for personal hearing and as and when such an application is made, the respondent is directed to consider the same. For the reasons stated above, the impugned order dated 16.1.2004 is hereby quashed and set aside. The matter is remanded to the Secretary, Education department for deciding the question with regard to grant No Objection Certificate to the petitioner for starting educational institution for B.Ed. course afresh in accordance with law and on merits and considering the observations made hereinabove and pass a speaking order. Rule is made absolute accordingly with no order as to costs. The aforesaid exercise is to be completed by the respondent within a period of three months from the date of receipt of the writ of this order. Direct Service is permitted.

(M.R.Shah, J)

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